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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,017

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EXAMINER

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/774,017	<b>Applicant(s)</b> BOULANGER ET AL.	
	<b>Examiner</b> TRANG DOAN	<b>Art Unit</b> 2431	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This action is in response to the amendment filed on 07/11/2008.
2. Claims 1, 3-6, 10-13, 15-17, 20-21, 23-27 and 30 have been amended.
3. Claims 1-30 are pending for consideration.
4. The terminal disclaimer filed on 08/12/2008 has been reviewed and is accepted.  
The terminal disclaimer has been recorded.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.
6. Regarding claims 11-19, Applicant's argument with respect to the 35 U.S.C. 101 rejection has been fully considered in view of the amendment filed 07/11/2008, which has been made in record, and the 35 U.S.C. 101 rejection has been withdrawn.  
However, Applicant does not amend claim 20 to have the same features as the amended claim 11. Therefore, Examiner maintains the 101 rejection for claim 20.
7. Regarding claims 21-30, adding the term "tangible" to the computer storage medium does not make these claims fall within one of the four statutory classes.  
According to the Dictionary.com, the term "tangible" defines either touchable or perceptible. Signal can be perceived. Therefore, Examiner maintains the 101 rejection for claims 21-30.
8. Examiner has withdrawn the double patenting rejection in view of the terminal disclaimer filed on 08/12/2008, which has been made in record.

***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 20 and 21-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 20 is directed to a system comprising the steps of means for detecting, means for applying and means for determining the anomalous traffic. According to the specification, paragraphs 0022 and 0030, the system can be in hardware and/or software. Therefore, claim 20 is a system software per se, failing to fall within a statutory category of invention (see MPEP 2106.01).

Claims 21-30 are directed to a tangible computer storage medium having computer readable code embodied therein. According to the specification, paragraph 0023, "computer-readable medium .... not limited to, **an electronic, magnetic, optical, electromagnetic, infrared** (e.g., carrier waves, infrared signals, digital signals, etc.) ... computer-readable medium could even be **paper**". In light of the specification, these claims do not fall within one of the four statutory classes of an invention (method/process, article of manufacture, a composition of matter, or machine). Carrier wave is a signal, not a series of steps. Carrier wave is a form of energy and not a composition of matter. Carrier wave does not have any physical structure, does not itself perform any useful, concrete and tangible result and thus does not fit within the definition of a machine or an article of manufacture.

The dependent claims are depended on the rejected base claim, and are rejected for the same rationales.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Cox et al. (US 6738814) (hereinafter Cox).

Regarding claim 1, Cox discloses a method of operating a communication network, comprising: autonomously monitoring communication traffic at a communication port for an anomalous traffic (Cox: See Abstract section; and column 3 lines 4-29); detecting an anomaly in communication traffic at a plurality of nodes in the communication network, wherein the anomaly is an attack other than a worm or virus (Cox: column 3 lines 30-54); independently applying, at respective ones of the plurality of nodes, a first blocking measure A to the anomalous traffic that stops the anomalous traffic (Cox: column 4 lines 28-36); and independently determining, at the respective ones of the plurality of nodes, a second blocking measure B such that application of a

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logical combination of the first blocking measure A and the second blocking measure B to stop the anomalous traffic (Cox: column 4 lines 54-61).

Regarding claims 2, 12 and 22, Cox discloses wherein independently determining the second blocking measure B comprises: applying a logical combination of A and a second blocking measure B given by (A & !B) to the anomalous traffic, wherein the logical combination (A & !B) is a less restrictive blocking measure than a logical combination (A & B); and enforcing the logical combination (A & !B) if the logical combination (A & !B) stops the anomalous traffic (Cox: column 4 lines 28-61).

Regarding claims 3, 13 and 23, Cox discloses independently determining a third blocking measure C at the respective ones of the plurality of nodes such that application of a logical combination of (A & !B) and the third blocking measure C to the anomalous traffic stops the anomalous traffic if the logical combination (A & !B) stops the anomalous traffic (Cox: column 4 lines 21-24).

Regarding claims 4, 14 and 24, Cox discloses wherein independently determining the second blocking measure B further comprises: applying a logical combination (A & B) to the anomalous traffic if the logical combination (A & !B) does not stop the anomalous traffic; and enforcing the logical combination (A & B) if the logical combination (A & B) stops the anomalous traffic (Cox: column 4 lines 28-61).

Regarding claims 5, 15 and 25, Cox discloses independently determining a third blocking measure C at the respective ones of the plurality of nodes such that application of a logical combination of (A & B) and the third blocking measure C to the anomalous

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traffic stops the anomalous traffic if the logical combination (A & B) stops the anomalous traffic (Cox: column 4 lines 21-24).

Regarding claims 6, 16 and 26, Cox discloses determining a third blocking measure C at the respective ones of the plurality of nodes such that application of a logical combination of A and the third blocking measure C to the anomalous traffic stops the anomalous traffic if the logical combination (A & B) does not stop the anomalous traffic (Cox: column 4 lines 21-24).

Regarding claims 7, 17 and 27, Cox discloses wherein detecting an anomaly in the communication traffic comprises: comparing the communication traffic to at least one anomaly factor; and detecting the anomaly in the communication traffic at the plurality of nodes in the communication network if the at least one anomaly factor is present in the communication traffic (Cox: column 3 line 55 through column 4 line 15; and column 4 lines 28-40).

Regarding claims 8, 18 and 28, Cox discloses assigning a severity to the detected anomaly; and wherein independently applying the first blocking measure A to the anomalous traffic comprises independently applying the first blocking measure A to the anomalous traffic at each of the plurality of nodes in the communication network that stops or reduces the flow of the anomalous traffic based on the severity of the detected anomaly (Cox: column 3 line 55 through column 4 line 15).

Regarding claims 9, 19 and 29, Cox discloses intentionally inserting the anomaly in the communication traffic; and associating the first blocking measure A and the second blocking measure B with the anomaly (Cox: column 4 lines 28-61).

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Regarding claim 10, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Regarding claim 11, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Regarding claim 20, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Regarding claim 21, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

Regarding claim 30, this claim has limitations that is similar to those of claim 1, thus it is rejected with the same rationale applied against claim 1 above.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Examiner's Note: Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.



In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRANG DOAN whose telephone number is (571)272-0740. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ayaz Sheikh can be reached on (571) 272-3795. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Trang Doan/  
Examiner, Art Unit 2431

/Syed Zia/

Primary Examiner, Art Unit 2431